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EXAMINER

HAYES, KRISTEN C

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/583,499	Applicant(s) BOCQUIER, FRANCOIS	
	Examiner KRISTEN C. HAYES	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Invention I, claims 1-16 in the reply filed on 06/08/2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

4. Claim 1 recites the means for identifying an electronic tag being activated by processing an image of the female animal. It is unclear as to how the means for identifying is activated by processing an image.

5. In claim 12, it is unclear as to how the means for identifying the female by processing is activated by the means for detecting.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. In claim 1 it is unclear whether the fastener comprises the means for detecting and the means for identifying or if these elements are separate.

9. In claim 1, lines 5, 6, it is unclear how the “means for identifying an electronic tag . . . [is] activated by said . . . means for identifying.”

10. Claim 2 recites the limitation of a means for identifying an electronic tag. It is unclear if this tag is the same as the tag recited in claim 1 or is an additional tag.

11. Claim 3 recites the limitation of the electronic tag being placed in the digestive tract of the female. However, in claim 1, the device is said to be worn by the animal (presumably the male that attempts to mount the female).

12. Claim 3 recites the limitation "said electronic tag" in line 1. There is insufficient antecedent basis for this limitation in the claim. The electronic tag is not previously positively claimed.

13. Claim 5 does not further structurally limit the device and seems to recite method steps.

14. Claim 6 claims a means for writing onto said electronic tag; it is unclear as to what is being written.

15. Claim 6 recites the limitation "said electronic tag" in line 2. There is insufficient antecedent basis for this limitation in the claim. The electronic tag is not previously positively claimed.

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16. Claim 7 recites the limitation of “a harness positioning during a mounting attempt,” which seems to be a method step. It is unclear as to what structure positions the harness.

17. In claim 7, the means for identifying is claimed as having an antenna. However, from the specification, it seems the means for attaching comprises an antenna which sends signals to the means for identifying. The means for identifying does not comprise an antenna.

18. Claim 7 recites the limitation "said electronic tag" in line 3. There is insufficient antecedent basis for this limitation in the claim. The electronic tag is not previously positively claimed.

19. Claim 16 recites the limitation “said fraction.” There is insufficient antecedent basis for this limitation in the claim.

20. Claim element "means for writing" (claim 6) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The specification discloses that the device itself is capable of performing this function, but it is unclear as to what element of the device can perform the function.

21. Claim element "means for identifying" (claim 1) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The specification does not disclose structure to perform this function.

22. Claim element "means for excluding " (claim 4) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. The specification does not disclose structure to perform this function.

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23. Claim element "means for transmitting " (claim 14) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. It is unclear as to what element performs the function of transmitting

24. Claim element "means for processing identifications" (claim 15) is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. It is unclear as to what element performs the function of processing identifications.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

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(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

Claim Rejections - 35 USC § 102

25. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

26. Claims 1, 2, 4-7 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by McAlister US 4,503,808.

27. Regarding claims 1 and 2, McAlister discloses a device for automated detection of mounting among animals comprising a fastener (22) positioned on the animal; means for detecting a mounting attempt (18) by the animal on a female animal, means for identifying an electronic tag (20) in an organ of the female animal (as best understood).

28. Regarding claim 4, McAlister further discloses a memory of identifications of excluded electronic tags (30) (as best understood); and means for excluding identifications of electronic tags (28) (as best understood).

29. Regarding claim 5, McAlister further discloses said means for detecting and said means for identifying are comprised of emitting a magnetic field energizing said electronic tag placed in said organ of said female to energize said electronic tag (as best understood).

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30. Regarding claim 6, McAlister further discloses the means for identifying comprising means for writing (28) onto said electronic tag (as best understood).

31. Regarding claim 7, McAlister further discloses a harness (22) positioning during a mounting attempt (as best understood), said means for identifying having an antenna (McAlister, column 5: lines 44-46).

32. Regarding claim 13, McAlister further discloses means for determining time and date of each mounting attempt (McAlister, column 5: line 44; column 6: line 8).

33. Regarding claim 14, McAlister further discloses means for transmitting (McAlister, column 5: lines 45-49) at least one part of the identifications of the female animal identified by said means for identifying.

34. Regarding claim 15, McAlister further discloses means for processing identifications of female animals (28).

35. Regarding claim 16, McAlister further discloses the means for processing the identifications of female animals is capable of determining said result bases on a calibration of libdo of at least one animal of said fraction of the animals (McAlister, column 6: lines 3-24).

Claim Rejections - 35 USC § 103

36. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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37. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister US 4,503,808 in view of Starzl et al US 5,542,431.

38. Regarding claim 9, McAlister discloses a sensor (18) under a belly of the animal wearing the device, but does not disclose the sensor being a pressure sensor. Starzl teaches a pressure sensor (Starzl, column 9: line 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of McAlister with a pressure sensor as disclosed by Starzl as to provide a mechanical system to alert the user when a cow is mounted in case of failure of the sensor.

39. Regarding claim 10, McAlister discloses a sensor (18) under a belly of the animal wearing the device, but does not disclose the sensor being a temperature sensor. Starzl teaches a temperature sensor (442). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of McAlister with a temperature sensor as disclosed by Starzl as to provide information about the ambient environment of the cow, which may help determine information about the cow's heat cycle.

40. Regarding claim 11, McAlister discloses a sensor (18) under a belly of the animal wearing the device, but does not disclose the sensor being a motion sensor. Starzl teaches a motion sensor (Starzl, Figure 13). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of McAlister with a motion sensor as disclosed by Starzl as to aide in determining information about the cow's heat cycle.

Allowable Subject Matter

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Claims 3, 8 and 12 would be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. HAYES whose telephone number is (571)270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KCH
17 September 2009

/Rob Swiatek/
Primary Examiner, Art Unit 3643
23 September 2009